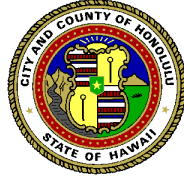


ETHICS COMMISSION  
**CITY AND COUNTY OF HONOLULU**

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KIRK CALDWELL  
MAYOR



CHARLES W. TOTTO  
EXECUTIVE DIRECTOR & LEGAL COUNSEL

ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU

Date and Place: January 20, 2016  
Standard Financial Plaza  
Conference Room, Suite 211

Present: Hon. Victoria Marks (ret), Chair  
Michael Lilly, Esq., Vice Chair  
Stephen Silva, Commissioner  
Stanford Yuen, P.E., Commissioner  
Hon. Riki Amano (ret.), Commissioner  
Hon. Allene Suemori (ret), Commissioner  
Charles W. Totto, Executive Director and Legal Counsel (EDLC)  
William Shanafelt, Investigator III  
Geoffrey Kam, Deputy Corporation Counsel, Department of the  
Corporation Counsel (COR)  
Gordon Pang, Star-Advertiser

Absent: Laurie A. Wong, Associate Legal Counsel (ALC)

Stenographer: Lisa P. Parker, Legal Clerk III  
Kristine Bigornia, Legal Clerk I

**MINUTES OF THE JANUARY 20, 2016 OPEN SESSION MEETING**

I. CALL TO ORDER

The Ethics Commission members had received a copy of the Open Session Memorandum from the EDLC, dated January 15, 2016. Vice Chair Lilly called to order at 11:34 a.m.

II. NEW BUSINESS

- A. For Action: Motion to Approve the Open Session Minutes of the December 16, 2015 Meeting.

**Commissioner Amano moved to approve the minutes of the December 16, 2015 meeting. Commissioner Silva seconded. All in favor, and the motion carried.**

B. Nomination and Vote for Chair and Vice Chair for Calendar Year 2016.

Vice Chair Lilly announced he is a holdover member until further notice.

Commissioner Yuen asked the EDLC if there was a policy to wait on elections until new appointed members come aboard. The EDLC answered that the Ethics Commission Rules of Procedure required that every calendar year, the Commission nominates and votes for a new Chair and Vice Chair. The Commission can either postpone or vote today. The EDLC informed the Commission that there were no updates regarding new appointments of members from the Mayor's office.

Commissioner Yuen commented he would like to keep it as is until the new appointed members come aboard.

Commissioner Amano commented she would like to have the elections today because the Commission needs full leadership.

Commissioner Yuen stated that the leadership can continue its current status. Commissioner Amano argued the Commission has only one person, who is Vice Chair Lilly taking the role as Chair as well.

With their busy schedules, both former Chair Chen and Vice Chair Lilly coordinated and prioritized what needed to be done. For the future, Vice Chair Lilly stated that the Chair needs to be responsible for everything.

Commissioner Amano agreed in general, but the Commission's responsibilities go beyond the normal at this time. She continued the Commission needs two people with great communication skills.

Commissioner Silva asked to proceed with the elections.

The EDLC stated the floor was open to nominations.

Commissioner Silva nominated Vice Chair Lilly as Chair and Commissioner Amano as Vice Chair.

Commissioner Amano nominated Commissioner Marks as Chair and Vice Chair Lilly to continue as Vice Chair until further update on the new appointees.

The EDLC asked if there any more nominations. The Commission had none.

The EDLC announced the nominations:

Vice Chair Lilly and Commissioner Marks as Chair  
Vice Chair Lilly and Commissioner Amano as Vice Chair

The Commission confirmed.

The EDLC opened the floor to voting:

For Chair:

Vice Chair Lilly: Two (2) votes; Commissioners Silva and Yuen

Commissioners Marks: Four (4) votes; Commissioners Marks, Suemori, Amano,  
and Lilly

For Vice Chair:

Vice Chair Lilly: Four (4) votes; Commissioners Marks, Suemori, Amano, and  
Yuen

Commissioner Amano: Two (2) votes; Vice Chair Lilly and Commissioner Silva

The Commission confirmed Commissioner Marks as Chair and Vice Chair Lilly to  
continue in his position.

C. Executive Director and Legal Counsel's Administrative Report.

1. Reports from Staff Members.

Chair Marks asked the Commission if they had a chance to read the Open Session  
Memo, and the Commission confirmed. Chair Marks asked the Commission if they had any  
questions to the staff.

Chair Marks asked Investigator Shanafelt how many investigations he was  
conducting. Investigator Shanafelt answered in the attachment (Open-2), he listed 17  
investigations. Currently, he has four (4) that he was working actively on and has at least thirty  
(30) cases assigned to him. He explained there was a priority list, but when a complainant calls  
to follow-up on the status, he has to read the case file in order to respond.

Chair Marks asked Investigator Shanafelt, from his prior experience, was the  
workload here higher, or more complex or super complex. Investigator Shanafelt explained his  
background working in different agencies in Texas, where there were 15 investigators each  
working on 80 cases, and that was unmanageable. He concluded that, with his limited  
experience, handling a similar number of complaint investigations at the Commission is  
unmanageable. From those experiences, he prioritized by knocking out the easiest or the oldest  
cases. Before she left the agency, former Investigator Letha DeCaires referred five (5) cases to  
him to work on with her transfer investigative report.

Commissioner Suemori asked was there a list of pending cases in the office.  
Investigator Shanafelt stated there was, that he did not print out an entire list, but he can always

go back to the list. Investigator Shanafelt explained there was a log that Staff records for every request for advice and complaint that comes in.

Commissioner Suemori asked if Investigator Shanafelt knew, along with the rest of the office, how many pending complaint cases there are. Investigator Shanafelt answered he does not have a number because he was not working on all the complaint cases at this time but could refer to the Inquiries Log to obtain the total number.

Commissioner Suemori asked how Investigator Shanafelt prioritized complaint cases for review. Investigator Shanafelt stated the EDLC gave him a list of factors for how to prioritize the cases. Commissioner Suemori asked if they were prior to coming in or cases that are pending. Investigator Shanafelt answered both. Commissioner Suemori asked are the cases pending given higher priority. Investigator Shanafelt answered no, he would evaluate the priority based on the factors on prioritizing given in the memo. He explained the office has an Inquiries Log, which shows the requests for advice and complaints. When he started, Ms. DeCaires would go in and work on the pending cases. Both Ms. DeCaires and the EDLC would guide him on how to review a case, and then Ms. DeCaires would go over each case with him.

Vice Chair Lilly further explained that the shared log tracks each request for advice and complaint case, who was assigned to this case, and status, etc.

Commissioner Suemori then asked of the pending cases, who has the whole list to make sure that the cases are reviewed. The EDLC answered that all cases are listed in the Inquiries Log and he looks at the list at least once a month to see what's open. The EDLC further explained that priority does not depend solely on the date when the matter was opened. The priority also depends on the seriousness of the alleged misconduct and other factors.

Commissioner Suemori asked the EDLC if the priority of cases change every month. The EDLC answered not every month, but it would change if a case becomes more urgent. Commissioner Suemori stated that, based on the relative priority, some cases go onto the back burner.

Chair Marks asked the Commission if they have any questions for Legal Clerks Parker and Bigornia. The Commission had none.

Chair Marks stated that there were additional statistics that Legal Clerk Bigornia passed out. The EDLC apologized and explained that in the Open Session Memo, there were two Open 3 reference. He further explained the statistics was the second "Open-3," and was referenced in page 4. In prior meetings, these statistics were used before and also used in budgeting purposes and workload.

Vice Chair Lilly asked when you say "Open-1" or "Open-2," how do we know what that was other than looking at it because the attachments were not mentioned in the agenda.

The EDLC explained that the attachments were referenced in the Open Session Memo.

Chair Marks and Commissioner Lilly said they like Dropbox.

Commissioner Suemori stated Dropbox is good for some, but she does not have printer capability. Vice Chair Lilly explained that documents can be accessible on the screen. Commissioner Suemori stated she does not have a laptop.

Vice Chair Lilly suggested re-formatting how the meeting materials link to the attachments. Staff should note on the agenda itself which attachments belong to each agenda item. When a Commission member locates the agenda in Dropbox, the attachment will state the Commission meeting date, the agenda item and the title of the document. As a result, the member will be able to see the attachments that are relevant to the agenda item for the upcoming meeting.

Chair Marks moved to have the Commission give her authorization to contact a law student for an interview to work as an intern to the Commission for an interview, and she will be the contact person. She would like to see a survey looking at State Ethics Commission, the Office of Disciplinary Counsel, and all of the counties' rules to do a comparative analysis and to come up with a draft of proposed rules. Then forward his draft to the EDLC and/or the ALC for review. This will also relieve some of the EDLC's and the ALC's work.

Commissioner Suemori seconded the motion.

Because Chair Marks' motion was not noticed on the agenda, Deputy Kam explained to the Commission that it could first move to have the agenda amended to add the motion to the agenda. If it is added to the agenda, the EC may vote on it because it is not a motion that impacts significant rights of others.

**Vice Chair Lilly moved to amend the agenda to add Chair Marks' motion. Commissioner Amano seconded the motion. All in favor, and the motion carried unanimously.**

Commissioner Amano moved to invite Chair Marks' motion as stated. Commissioner Suemori seconded the motion.

The EDLC informed the Commission that there will be no available space in the office for the intern to work. Chair Marks' confirmed the intern will not be working in the office.

**All were in favor to hire an intern, and the motion carried unanimously.**

The EDLC asked the Commission if the rules review applied to the Pre-Hearing and Hearing rules or all rules. Chair Marks' answered it was the "Rules of Procedure." The EDLC asked if the Commission was thinking of re-doing all the rules. Chair Marks and Commissioner Suemori answered they were not sure. Chair Marks explained was to do a survey for comparative analysis of all the different agencies. The EDLC wanted to clarify because Staff does not have the ability to use subpoenas or conduct discovery between the filing of

Notice of Alleged Violation (“NOAV”) and the Hearing. The EDLC has instructed Staff to postpone submitting NOAVs until the rules regarding subpoenas were clarified.

Chair Marks’ stated that the intern will be assigned to draft potential rules based on best practices after looking at all the different agencies’ rules. The EDLC asked the Chair if he can pass his and the ALC’s research on to him. Chair Marks’ requested to send their research to her.

Commissioner Amano asked the Commission that Chair Mark’s will be the designating contact and spokesperson for the Commission on this issue. The Commission agreed.

Chair Marks’ asked the Commission if they have any questions for the EDLC. The Commission had none.

Chair Marks asked Deputy Kam when the Commission received both agenda and the EDLC’s report, does the Commission need to be publish the agenda and report to the public. Deputy Kam answered that the open session meeting materials should be available for the public to review.

The EDLC informed the Commission that Staff would upload to the website the agenda and the open session memo and its attachments for the public to review.

Chair Marks stated that the EDLC should provide a report on the following for each meeting: Staff reports, statistics, budget (both current and upcoming fiscal years), and ethics training reports. The EDLC added that quarterly email guide and staff priorities will also be included.

**[Gordon Pang, Reporter from Star-Advertiser entered]**

Reporter Pang introduced himself to the Commission.

Commissioner Amano appreciated the Staff for putting together the minutes from February to June 2015. She suggested if the minutes can be in summary fashion versus being in verbatim.

Legal Clerk Parker explained to the Commission that during that time, the office was swamped. She sends out the audio recording to be transcribed. When the transcription was finished, the ALC reviewed and summarized them. That’s why it looks verbatim.

Chair Marks asked the EDLC if the Office of Information Practices had given him a written report on the requirements of the Sunshine Law regarding minutes. The EDLC answered that the ALC went to the training session, so he does not have it in hand.

Chair Marks moved on to the Charter Commission (“CC”). She asked the EDLC if the Charter Commission has sent him a letter specifically asking him to present information.

The EDLC answered that the CC set up a Permitted Interaction Group (“PIG”) at its January 15 meeting to focus on amendments regarding ethics law and organization. On January 19, the EDLC received a phone call from CC and Ethics PIG member Kevin Mulligan.

During their phone discussion, Mr. Mulligan brought up the various issues regarding the salary setting process for the EC’ lawyers, budget independence and EC member selection. He asked that the EDLC assist in providing them information about possible amendments. The EDLC told Mr. Mulligan that the EC would have to review the various proposals before making any specific statement on the ethics proposals, other than the one the EC submitted to the CC. The EDLC stated that aiding the CC would help ensure that the CC was provided accurate information about the benefits and disadvantages of the proposed changes. Whether the EC makes a statement regarding the specific amendments is a separate matter.

Chair Marks asked the EDLC if the CC has separate counsel. The EDLC answered that they have three or four COR deputies, but was not sure who they are or what their scope of work is.

The EDLC asked Deputy Kam if Deputy Mayeshiro is assigned to the Ethics PIG. Deputy Kam answered he does not know, but confirmed that there are three or four COR deputies assigned to assist the Charter Commission.

Chair Marks stated that she does not think that the Commission should take a stand on the Inspector General proposal.

Chair Marks stated that the Commission should agree with the budget independence issue, but not how the selection process should be changed,.

Vice Chair Lilly stated how changes in EC member selection are made is a policy decision outside of the EC’s authority, but he believed the EC may take a position on amendments that provide increased independence to the Commission that allows the Commission to be more effective. For example, when the Prosecuting Attorney, who had been appointed by the mayor, was supposed to investigate and possibly prosecute the mayor in the Kukui Plaza case. Because of that conflict, this lead to a Charter amendment requiring the Prosecuting Attorney to be elected, so that the office could conduct independent investigations. The Commission investigates City officials and employees. The extent to which the EC becomes more independent will give the EC more credibility and independence to take action. The concept of being more independent is a good thing, but how that is achieved, depends on the policymakers. From his standpoint, he would like to be able to tell the EDLC and the Charter Commission that the EC supports efforts to be more independent, but will leave the specific amendments up to the CC.

Chair Marks asked Vice Chair Lilly if he wants to make a motion.

**Vice Chair Lilly moved that the Commission support efforts for them to become more independent. Commissioner Amano seconded the motion.**

Commissioner Suemori expressed she likes this idea but also believes in “checks and balances” by the appointing authority to monitor the EC.

**Chair Marks asked for further questions. The Commission had none. All were in favor of Vice Chair Lilly’s motion, and the motion carried unanimously.**

Vice Chair Lilly reiterated his motion by stating that the Commission’s position is to direct the EDLC to convey to the Charter Commission that the Commission is in favor of provisions that would increase the independence of the Commission.

Commissioner Suemori stated no more, no less, no elaboration, and if they want an elaboration, they’ll just have to second guess it.

Commissioner Amano stated a question: does that umbrella fall over the idea of appointing authorities or do we not intent to go to the issues of who appoints Commissioners? Vice Chair Lilly stated that it would be up to the CC. Commissioner Amano asked if their statement addresses the issue of appointments because they need to be clear on that. Vice Chair Lilly answered, it doesn’t because for example, one of the proposals, every member is appointed by different agencies and entities. He concluded that this would create some kind of independence, but that would be up to the CC.

Commissioner Amano stated when they direct the EDLC to say, “The Commission supports any endeavors that make it independent,” we have to be clear this is not construed as a comment on appointed board and commission members. Vice Chair Lilly clarified that the Commission would not comment on how we get there or how we’re appointed, that’s for the CC to decide. Commissioner Amano stated that we need to make that clear, unless our statement includes that.

Chair Marks asked whether the EC meant to comment on how the appointment process might work. Commissioner Suemori stated that she’s okay with that.

Vice Chair Lilly stated that it was clear to the EDLC. Commissioner Amano stated that the Commission was making this statement that the Commission wants independence, and arguably independence can come from having a different way to appoint Commissioners, was that what the Commission was saying. She continued since our discussion was “no, we’re not making a comment on appointments” that would be up to other people. In conclusion, the Commission commented that anything that supports the independence of the Commission to do its work is supported by them.

Commissioner Amano asked on a practical matter, we have so much work to do, how can we dispatch the EDLC to do work for the CC? The EDLC replied the matters before the CC that would affect the Charter and the EC should be given high priority. In 2005, the EDLC raised the issue having budget independence before the CC, but the issue has not been resolved.



Chair Marks stated from the EDLC's point of view, it might help the EC to help the CC, so that the CC might look favorably on budget independence. The EDLC added, also the salaries proposal.

Chair Marks asked the EDLC what he would do. The EDLC planned on talking to the Honolulu City Auditor to see if the budget process used for his office, which was similar to the one proposed for the EC, works well.

Chair Marks asked what research he would expect to do regarding the Oakland Public Ethics Commission. The EDLC replied that he will take an hour or two discussing the budget independence and member selection with his counter-part in Oakland, and then report back to the CC's PIG.

Chair Marks asked whether the CC's PIG asked the EDLC to look into those issues. The EDLC replied yes, he was looking at about three hours of work, including putting things into writing to send back to the PIG.

Chair Marks agreed that Commissioner Amano has a legitimate point about taking more work. Mr. Mulligan asked the EDLC whether he can check with his counter-part if the Oakland approach works. The CC wants to help the EC achieve more independence, but needs to know whether there were practical solutions. The EDLC explained how the Honolulu City Auditor has a level of budget independence that was similar to one of the proposals for the EC.

Commissioner Amano summarized that the EDLC has heard the Commission's policy discussion and should make the decisions he believes are proper. She added that the EDLC has often come to the Commission saying that he and Staff were over-loaded with work. She concluded that the Commission should defer to the EDLC to make the work priority decisions he has to make.

The EDLC appreciated the clarification.

Commissioner Amano stated that it was the EDLC's call to the degree to which he will be involved with the CC. Chair Marks said she could understand the PIG asking the EDLC to get in touch with another ethics office about the process there.

Chair Marks asked the Commission if they have any further questions in this topic. The Commission has none.

Chair Marks asked the Commission if there have any questions on the EDLC's report.

Commissioner Amano requested that the agenda items dealing with the EC's Rules of Procedure and Gift Guidelines be tabled under old business, since the intern will be providing additional information on the former for us. Chair Marks agreed.

Chair Marks added that she wants to see Staff send out the quarterly newsletter. Commissioner Suemori asked when the launch date is. The EDLC replied no later than February 15.

Chair Marks instructed that it should be one page in bullet points. Vice Chair Lilly also wants to include the contact information. Commissioner Suemori added to put in any cartoon that is not copyrighted, put those in.

**Commissioner Amano moved to exit open session and enter into executive session. Commissioner Suemori seconded the motion. All in favor, the motion carried unanimously.**

- D. For Discussion: Potential Amendments to Commission's Rules of Procedure, Including Contested Case Pre-Hearing and Hearing Procedures.

No discussion was had.

- E. For Discussion: Potential Changes to the Commission's Guidelines on Gifts.

No discussion was had.

III. EXECUTIVE SESSION SUMMARY (The following agenda items will be reviewed in executive session pursuant to Section 92-5(a)(2), Hawaii Revised Statutes (HRS), to consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of the matters affecting privacy will be involved; HRS Section 92-5(a)(4), to consult with the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities; or HRS Section 92-5(a)(8) to deliberate or make a decision upon a matter that requires consideration of information that must be kept confidential pursuant to state or federal law or court order.)

Staff was excused for Agenda Items III. A – D.

- A. For Action: Pursuant to HRS Sec. 92-5(a)(2) (a)(4) and (a)(8), Motion to Approve the Minutes of the Executive Session of the December 21, 2015 Meeting.

**The minutes were passed unanimously.**

- B. For Discussion: Pursuant to HRS Sec. 92-5(a)(2) (a)(4) and (a)(8), Regarding the Hire, Evaluation, Dismissal, or Discipline of an Officer or Employee to Consider the Independent Investigator's Report of Commission Office Conditions, Including Management, Personnel and Procedures.

The Commission decided to hold a special meeting on February 1, 2016 at 11:30 a.m in executive session. The Commission requests to have Human Resources' counsel from the Department of Corporation Counsel present, which Chair Marks understands might be Duane Pang. Deputy Kam stated that he will arrange the counsel's presence.

The EDLC asked the Commission if they want Staff or COR to prepare the agenda. The Commission answered the Staff.

- C. For Discussion: Pursuant to HRS Sec. 92-5(a)(2) (a)(4) and (a)(8), Processing Ethics Complaints Against Certain City Agency Personnel.

Commissioner Amano has been designated to represent the Commission in handling all procedural matters to obtain an investigator regarding complaints against certain city agency personnel.

The Commission has created a Permitted Interaction Group consisting of Commissioner Amano and Vice Chair Lilly to confer with the Managing Director regarding obtaining funding for Commission work.

- D. For Action: Pursuant to HRS Sec. 92-5(a)(2) (a)(4) and (a)(8), Request to Permit Staff to Communicate with a Non-Staff Person Regarding Certain Ethics Matters.

The Commission denied the request because of the person is not an employee and there could possibly be violations of the confidentiality law.

In an adjudicative matter, the Commission authorized Chair Marks to send a letter to Counsel in a pending case.

#### IV. ADJOURNMENT

**Commissioner Suemori moved to adjourn the meeting. Commissioner Amano seconded. All were in favor, and the motion carried.**

The meeting adjourned at approximately 2:37 p.m.